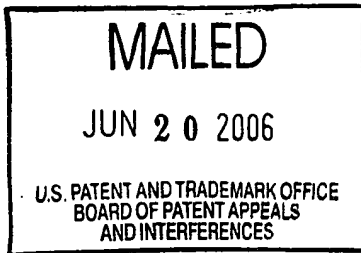


UNITED STATES PATENT AND TRADEMARK OFFICE



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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte ROBERT E. VAN CLEVE,  
STEVEN R. DUPREE, CURTIS R. JONES  
and  
DARREN J. CEPULIS

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Application 09/966,064

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ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

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This application was received electronically at the Board of Patent Appeals and Interferences on June 16, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being electronically returned to the examiner. The matters requiring attention prior to docketing are identified below:

An examination of the Image File Wrapper (IFW) reveals that an Appeal Brief was filed on October 7, 2005.

37 CFR § 41.37(c)(1)(v) reads as follows:

(c)(1) The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(i) through (c)(1)(x) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(i) through (c)(1)(iv) and (c)(1)(vii) through (c)(1)(x) of this section:

....

(v) *Summary of claimed subject matter.* A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of paragraph (c)(1)(vii) of this section, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

The “Summary of claimed subject matter” appearing on pages 7-9 of the Appeal Brief filed October 7, 2005 is deficient because it does not map the claimed invention to the independent claims. Correction is required.

An Examiner’s Answer was mailed December 30, 2005 in response to the Appeal Brief. The Examiner’s Answer does not fully comply with § 1207.02 of the Manual of Patent Examining Procedure (MPEP) (8<sup>th</sup> Ed., Rev. 3, August 2005) which states:

Requirements for Examiner’s Answer

The examiner’s answer is required to include, under appropriate headings, in the order indicated, the following items:

....

(8) Evidence Relied Upon. A listing of the evidence relied on (e.g., patents, publications, admitted prior art), and, in the case of nonpatent references, the relevant page or pages.

It is noted that while the Examiner’s Answer states that “[n]o evidence is relied upon by the examiner in the rejection of the claims under appeal” [page 3 under the caption “Evidence Relied Upon”], the claim rejections are listed as follows:

1. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Alcorn et al [Alcorn] (U.S. Patent No. 6,106,396) and Nakagiri (U.S. Patent No. 6,606,669) [page 3]; and

2. Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over applicant's admission of prior art [AAPA], Alcorn et al. [Alcorn] (U.S. Patent No. 6,106,396) and Nakagiri (U.S. Patent No. 6,606,669) [page 4].

Correction is required.

Accordingly, it is

ORDERED that the application is returned to the Examiner:

1) for notification to appellants to submit a substitute Appeal Brief which corrects the "Summary of claimed subject matter";

2) for consideration of the substitute Appeal Brief;

3) for submission of a revised Examiner's Answer which corrects the "Evidence Relied Upon" section; and

4) for such further action as may be appropriate.

BOARD OF PATENT APPEALS  
AND INTERFERENCES

By: 

DALE M. SHAW

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